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Loachapoka Water Authority, Inc.
Schmitt & Harper
213 Barnett Boulevard
Tallahassee, AL 36078

Water Authorities - Utilities

The Loachapoka Water Authority may delete a portion of the territory designated as the service area of the authority by the conveyance of such service area and improvements to the water system to the Macon County Water and Fire Protection Authority. Such conveyance may be made only with the consent of each county in the service area of the authority as evidenced by a resolution adopted by the county commission of each consenting county, and such conveyance cannot constitute a breach of any outstanding mortgage and deed of trust, trust indenture or other agreement to which the authority is a party.

Dear Mr. Harper:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTIONS

1. May the Loachapoka Water Authority, a public corporation incorporated under Code of Alabama 1975, § 11-88-1, et seq., delete from its service area any portion of real property which was previously designated as a part of the service area, either by the original Articles or by subsequent amendment thereto which added the area to the Authority's service area?

2. If the Loachapoka Water Authority has the lawful authority to delete from its defined service area any portion of land previously included with the service area either in the original or amended Certificate of Incorporation, is there any law which prohibits the Loachapoka Water Authority from conveying its right to the designated portion of the service area being deleted and any and all improvements to water system located therein to another water authority incorporated under the same or similar laws of the State of Alabama?

FACTS, LAW AND ANALYSIS

It is stated in your request that the service area of the Loachapoka Water Authority, as defined in its certificate of incorporation, includes property located in both Lee and Macon Counties. The Macon County Water and Fire Protection Authority is prepared to provide water service to those customers of the Loachapoka Water Authority located in Macon County. The Board of Directors of the Loachapoka Water Authority have deemed it in the best interest of the Authority to convey to the Macon County Water and Fire Protection Authority the accounts of those customers and that portion of the service area, including lines, meters, valves and other improvements in Macon County, in exchange for monetary consideration paid on a per-customer basis.

It is noted in the request that Code of Alabama 1975, § 11-88-5, concerning the amending of the articles of incorporation of such authority, makes no specific provision for the amendment of such articles of incorporation when territory is deleted from the service area.

Code of Alabama 1975, § 11-88-19 states:

"The existence of one or more authorities incorporated under the provisions of this article shall not prevent the subsequent incorporation under this article of another authority or the amendment of the certificate of incorporation of another authority pursuant to determinations made by the same county or counties, even though the service area described in the certificate of incorporation, as originally filed or as amended, of any existing authority may include territory that lies within the proposed service area of an authority that is proposed to be incorporated under this article or that proposes to amend its certificate of incorporation under this article; provided, however, that the provisions of this section shall not be deemed to eliminate the requirements that the statements of fact referred to in subdivision (3) of section 11-88-3 and in subdivisions (1) and (2) of subsection (c) of section 11-88-5 be determined to be true."

The powers of an authority are listed at § 11-88-7. An authority, organized under § 11-88-1, et seq., is authorized:

"(6) To make, enter into and execute such contracts, agreements, leases and other instruments and to take such other actions as may be necessary or convenient to accomplish any purpose for which the authority was organized or to exercise any power expressly granted under this section . . ."

and

"(22) To sell and convey, with or without valuable consideration, any of its water systems, sewer systems or fire protection facilities or any portion of any of the said systems and facilities to any one or more counties, municipalities or public corporations organized under the laws of the state which have the corporate power to operate the system and

facilities or portions thereof so conveyed and the property and income of which are not subject to taxation; provided, that any such sale and conveyance may be made only with the consent of each county in which any part of the service area of the authority is then located, such consent to be evidenced by a resolution adopted by the governing body of each consenting county, and only if any such conveyance would not constitute a breach of any then outstanding mortgage and deed of trust, trust indenture or other agreement to which the authority is a party . . ."

Section 11-88-7.1 contains additional powers of an authority, and provides that such authority is empowered:

"(2) To sell, transfer, convey, grant options to purchase, or lease all or any part of its system or systems for such consideration and on such terms as it shall deem advisable and in the best interest of the authority."

Although there is no specific provision authorizing an authority to delete territory from its service area, the above-quoted sections offer ample authority for the deletion through the sale, transfer and conveyance of a portion of systems and its facilities to political subdivisions or public corporations empowered to operate a water, sewer and/or fire protection system.

Furthermore, my research does not reveal any law prohibiting the Loachapoka Water Authority from conveying its right to a portion of its service area and improvements to another water authority, provided such conveyance does not constitute a breach of any agreement to which the authority is a party. § 11-88-7(22).

Code of Alabama 1975, § 11-88-5(b)(1)d allows the articles of incorporation of an authority to be amended to provide for "Any matters which might have been included in the original certificate of incorporation." This allows an amendment of the territorial description of the service area of the Loachapoka Water Authority, after a portion of the service area has been conveyed to the Macon County Water and Fire Protection Authority.

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It must be noted that § 11-88-7(22), quoted above, requires that the sale and conveyance by the Loachapoka Water Authority of a portion of its service area systems and facilities be approved by each county in which any part of the service area of the authority is located, such consent being evidenced by a resolution adopted by the governing body of each consenting county.

CONCLUSION

The Loachapoka Water Authority may delete a portion of the territory designated as the service area of the authority by the conveyance of such service area and improvements to the water system to the Macon County Water and Fire Protection Authority. Such conveyance may be made only with the consent of each county in the service area of the authority as evidenced by a resolution adopted by the county commission of each consenting county, and such conveyance cannot constitute a breach of any outstanding mortgage and deed of trust, trust indenture or other agreement to which the authority is a party.

I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General
By:



JAMES R. SOLOMON, JR.
Chief, Opinions Division

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